



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

30 DEC 2004

Patricia Walton
Environmental, Health and Safety Manager
Hanson Pipe & Products, Inc.
2900 Terminal Avenue
Richmond, VA 23234

Re: Notice of Determination, EPCRA-03-2004-0339
Self Disclosure of EPCRA Section 313 Violations
Facilities:

Dear Ms. Walton:

Enclosed is a Notice of Determination ("NOD") which has been issued by the United States Environmental Protection Agency, Region III ("EPA"), pursuant to EPA's revised final policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Fed. Reg. 19618 (April 11, 2000) (Self-Disclosure Policy). EPA has applied the Self-Disclosure Policy to Hanson Pipe & Products, Inc.'s ("Hanson Pipe") disclosure of violations in its undated letters, which were received on July 26, 2004, and additional information dated September 15, 2004 and October 12, 2004. Specifically, Hanson Pipe disclosed potential violations of Section 313 of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11023, which occurred at nine of Hanson Pipe's facilities located in Maryland and Virginia.

The disclosures made by Hanson Pipe included information which was claimed as Confidential Business Information ("CBI"). In your substantiation letter dated December 6, 2004, Hanson Pipe waived the CBI claim to all of the information except for the total corporate gross sales. EPA needs to make a final confidentiality determination. While that determination is being made, EPA continues to treat this information claimed as CBI.

EPA has determined that Hanson Pipe has complied with the requirements of the Self-Disclosure Policy and is entitled to a 100% mitigation of the gravity-based component of the civil penalty EPA would have assessed for the violations of EPCRA, had such violations not been self-disclosed. EPA also waives the economic benefit component of the civil penalty because such benefit, if any, has been determined to be insignificant. Please be aware that EPA reserves its rights to initiate an enforcement action and seek an assessment of a civil penalty concerning the violations disclosed by Hanson Pipe if it is subsequently determined by EPA that

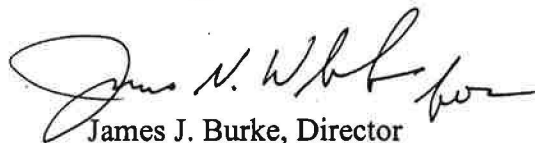


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any information provided by Hanson Pipe to EPA, upon which the aforementioned civil penalty mitigation was based, was materially false or inaccurate.

If you have any questions concerning the NOD, please do not hesitate to contact the Paralegal assigned to this matter, Maria Goodine, at (215) 814-2488.

Sincerely,

A handwritten signature in black ink, appearing to read "James J. Burke".

James J. Burke, Director
Waste and Chemicals
Management Division

Enclosure: NOD

cc: Craig Yussen (3WC33)
Maria Goodine (3RC20)
Karen Melvin (3EC10)
Lydia Guy (3RC00)
Joan Dent (3RC00)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

**Hanson Pipe & Products, Inc.
2900 Terminal Avenue
Richmond, VA 23234**

Docket No. EPCRA-03-2004-0339

**NOTICE OF DETERMINATION
under Section 313 of the
Emergency Planning and Community
Right-to-Know Act (EPCRA),
42 U.S.C. §11023**

NOTICE OF DETERMINATION

Pursuant to EPA's revised final policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Fed. Reg. 19618 (April 11, 2000) ("Self-Disclosure Policy"), the United States Environmental Protection Agency - Region III ("EPA"), hereby issues this Notice of Determination ("NOD") regarding violations by Hanson Pipe & Products, Inc., ("Hanson Pipe") of Section 313 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §11023, and its implementing regulations at 40 C.F.R. Part 372, at the Hanson Pipe facilities located at Richmond, Virginia; Ashland, Virginia; Salem, Virginia; Roanoke, Virginia; Prince George, Virginia; Manassas, Virginia; Jessup, Maryland; and Chesapeake, Virginia ("Facilities," see Attachment 1 for a chart of the facilities). The violations which are the subject of this NOD were voluntarily disclosed to EPA by two letters (undated) which were received by EPA on or around July 26, 2004.

I. SELF-DISCLOSURE POLICY

In order to encourage regulated entities to conduct voluntary compliance evaluations and to voluntarily discover, disclose and correct violations of environmental requirements, EPA promulgated the Self-Disclosure Policy. As an incentive for regulated entities to participate in the Self-Disclosure Policy's voluntary disclosure process, EPA may eliminate or substantially reduce the gravity-based component of civil penalties to be assessed for violations which are voluntarily disclosed in compliance with the conditions specified in the Self-Disclosure Policy. The conditions of the Self-Disclosure Policy are as follows:

- (1) Systematic Discovery;
- (2) Voluntary Discovery;
- (3) Prompt Disclosure;
- (4) Discovery and Disclosure Independent of Government or Third-Party Plaintiff;
- (5) Correction and Remediation;
- (6) Prevent Recurrence;
- (7) No Repeat Violations;
- (8) Other Violations Excluded; and
- (9) Cooperation.

Pursuant to the Self-Disclosure Policy, EPA may reduce gravity-based penalties up to 100%, if the disclosing entity satisfies all of the conditions described above. EPA may reduce gravity-based penalties up to 75%, if the disclosing entity satisfies conditions (2) - (9), above. However, EPA reserves the right to assess a civil penalty with regard to any economic benefit that may have been realized as a result of such violations, even in those instances when the

disclosing entity has met all the conditions of the Self-Disclosure Policy. In its enforcement discretion, EPA may waive a civil penalty with regard to the economic benefit arising from such violations if EPA determines that such economic benefit is insignificant. Penalty reductions are not available under the Self-Disclosure Policy for violations that result in serious actual harm or may present an imminent and substantial endangerment to public health or the environment, nor are such reductions available for violations of any order or consent agreement.

II. FINDINGS OF FACT

Pursuant to the Self-Disclosure Policy, and based upon the information and representations provided by Hanson Pipe in its undated letters and subsequent information submitted to EPA on September 15, 2004 and October 12, 2004, EPA makes the following findings of fact and conclusions of law:

- A. Hanson Pipe has been the owner and/or operator of the facilities listed in Attachment 1.
- B. Hanson Pipe is a "person" as that term is defined by EPCRA Section 329(7), 42 U.S.C. §11049(7).
- C. Each site referenced in Attachment 1 is a "facility" as that term is defined by EPCRA Section 329(4), 42 U.S.C. §11049(4).
- D. Lead is a toxic chemical as listed in 40 C.F.R. § 372.65.
- E. By the two undated letters, Hanson Pipe disclosed to EPA, under the Self-Disclosure Policy, potential violations of EPCRA Section 313, 42 U.S.C. §11023, that may have occurred concerning its failure to submit Toxic Chemical Release Inventory ("TRI") Form R reports for the facilities for lead for the reporting years 2001 (only the Chesapeake, Virginia facility) and 2002. These letters were received by EPA on or

around July 26, 2004.

F. Based upon EPA's review of the information submitted by Hanson Pipe, EPA has concluded that Hanson Pipe has complied with all nine (9) conditions of the Self-Disclosure Policy as follows:

1. Systematic Discovery: Hanson Pipe discovered the violations through an environmental audit conducted by Patricia Walton, Regional Safety, Health and Environmental Manager, finalized on July 8, 2004.
2. Voluntary Discovery: Hanson Pipe discovered the aforementioned violations of Section 313 of EPCRA, 42 U.S.C. §11023, on a voluntary basis and not as a result of a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, or judicial or administrative order, or consent agreement.
3. Prompt Disclosure: Hanson Pipe's written disclosure, received by EPA on or around July 26, 2004, was made within twenty-one (21) days of Hanson Pipe's discovery of potential EPCRA violations that may have occurred at its Facilities.
4. Discovery and Disclosure Independent of Government or Third Party Plaintiff: The discovery and disclosure by Hanson Pipe of the potential violations occurred prior to the commencement or issuance of any federal, state or local inspection, investigation, information request, notice of citizen suit, complaint by a third party, report of the violation by a "whistleblower" or imminent discovery of the violation by a regulatory

agency.

5. Correction and Remediation: Hanson Pipe has submitted Form Rs for the Facilities for lead for the reporting years 2001 and 2002 within sixty (60) days after discovery of the violations.
6. Prevent Recurrence: Hanson Pipe's Regional Safety, Health and Environmental Managers are in the process of developing a written audit policy for Hanson Pipe. Currently these Managers use a checklist to ensure compliance with environmental regulations. Also, an Environmental Management System is presently being developed for implementation by Hanson Pipe. According to Hanson Pipe, this system will significantly aid in preventing recurrence of the potential violations discussed in this NOD.
7. No Repeat Violations: Neither the specific violation of Section 313, 42 U.S.C. §11023, as addressed in this NOD, nor a similar violation has occurred within the past three (3) years at the Facilities. Additionally, such violations have not occurred within the past five (5) years as part of a pattern at multiple facilities owned or operated by Hanson Pipe.
8. Other Violations Excluded: The disclosed violations did not result in actual serious harm and did not present a risk of imminent and substantial endangerment to human health or the environment, nor did the disclosed violations violate the specific terms of any judicial or administrative order or consent agreement.

9. Cooperation: Hanson Pipe has cooperated with EPA and has provided such information as necessary and requested by EPA to determine the applicability of the Self-Disclosure Policy.

III. EPA's DETERMINATION

Pursuant to the Self-Disclosure Policy, and based upon the information provided by Hanson Pipe in its undated letters and subsequent information submitted to EPA on September 15, 2004 and October 12, 2004, EPA makes the following determination concerning the disclosures identified above:

- A. Under Section 313 of EPCRA, certain businesses are required to submit reports each year on the amounts of toxic chemicals their facilities release into the environment, either routinely or as a result of accidents. The purpose of this reporting requirement is to inform government officials and the public about releases of toxic chemicals. Section 313 requires facilities to report releases to air, water, and land. These reports must be sent to the EPA and to designated state agencies and are due by July 1 each year. Pursuant to Section 313(a) of EPCRA, 42 U.S.C. §11023(a), Hanson Pipe was required to complete and submit TRI Form R reports for each of the toxic chemicals listed in 40 C.F.R. §372.65 which it manufactured, processed or used in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. §11023(f), to EPA and the State.
- B. Hanson Pipe violated Section 313 of EPCRA by failing to submit the required TRI Form R reports to EPA and the Commonwealth of Virginia and State of Maryland for the

Facilities for lead for the reporting years 2001 and 2002.

C. EPCRA Section 325(c)(1), 42 U.S.C. §11045(c)(1), provides that, for violations of 313 of EPCRA, 42 U.S.C. §11023, EPA may assess a penalty not to exceed \$25,000.00 per violation. Pursuant to the Debt Collection Improvement Act of 1996 (“DCIA”) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (“Penalty Inflation Rule”), violations of Section 313 of EPCRA which occur between January 30, 1997 and March 15, 2004, are subject to a new statutory maximum penalty of \$27,500.00 per violation. Each day a violation of Section 313 continues constitutes a separate violation.

D. In calculating the civil penalty to be assessed for a violation of EPCRA Section 313, EPA considers the statutory factors set forth in EPCRA Section 325(b)(1)(C) with specific reference to EPA’s *Enforcement Response Policy for Section 313 of EPCRA* (“ERP”), dated August 10, 1992. This policy provides a rational, consistent and equitable calculation methodology for applying to particular cases the statutory penalty factors enumerated above.

Based upon the information provided by Hanson Pipe and EPA’s consideration of the facts of this case and the ERP, EPA has determined that the total gravity-based civil penalty that would be appropriate for the aforementioned disclosure by Hanson Pipe as described above would be \$150,700.

E. Based upon information provided by Hanson Pipe, EPA has determined that Hanson Pipe has met all of the conditions of the Self-Disclosure Policy and qualifies for a 100% reduction in the gravity-based component of the civil penalty for the disclosed violations.

No significant economic benefit of non-compliance has accrued to Hanson Pipe concerning the violations described herein. Therefore, EPA will not assess a gravity-based civil penalty against Hanson Pipe for the aforementioned violations, nor will the Agency assess a penalty concerning any economic benefit of non-compliance which has accrued to Hanson Pipe.

IV. RESERVATION OF RIGHTS

- A. This NOD resolves only the potential claims for civil penalties pursuant to EPCRA for the violations alleged herein. Nothing in this NOD is intended to be nor shall be construed to operate in any way to resolve criminal liability, if any, of Hanson Pipe. EPA reserves the right to require compliance, corrective action, and/or other remedial measures in connection with any violations, including those alleged herein, of EPCRA or any other environmental law.
- B. This NOD shall not relieve Hanson Pipe of its obligation to comply with all applicable provisions of federal, state, and local law, nor shall it be construed to be a ruling on, or determination of, any issues relating to any federal, state, or local permit. Nor does this NOD constitute a waiver, suspension, or modification of the requirements of EPCRA or any regulations promulgated thereunder.
- C. EPA reserves the right to undertake any action against any person, including Hanson Pipe, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare or the environment.
- D. EPA reserves the right to revoke this NOD and, thereby, render such Notice of

Determination null and void if and to the extent that any information or certification provided by Hanson Pipe, upon which any civil penalty mitigation granted herein for such violation was based, was materially false or inaccurate at the time such information or certification was provided to EPA. In such event, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. Such revocation shall be in writing and shall become effective upon receipt by Hanson Pipe.

In issuing this Notice of Determination, EPA seeks to promote self-auditing by Hanson Pipe, and expects Hanson Pipe to be in full compliance with regulatory requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.

**Under the Authority of the
U.S. Environmental Protection Agency, Region III**

Date: December 29, 2004

By: James J. Burke
James J. Burke, Director
Waste and Chemicals
Management Division

ATTACHMENT 1

These facilities are owned by Hanson Pipe:

NAME OF FACILITY	ADDRESS
Hanson Richmond	2900 Terminal Avenue Richmond, VA 23234
Hanson Hanover Pipe	12063 Washington Highway Ashland, VA 23005
Hanson Salem	2000 Salem Industrial Drive Salem, VA 24153
Hanson Roanoke	2725 Roanoke Avenue, S.W. Roanoke, VA 24015
Hanson Petersburg Block	3601 Puddledock Road Prince George, VA 23875
Hanson Manassas	7816 Bethlehem Road Manassas, VA 20109
Hanson Hanover Block	11115 Johnson Road Ashland, VA 23005
Hanson Jessup-Dorsey Run	7979 Waterloo Road Jessup, MD 20794
Hanson Chesapeake	3801 Cook Boulevard Chesapeake, VA 23323